

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JASON SWIGER and JULIO	)	CASE NO.: 1:15-cv-02196
CRUZ, on behalf of themselves and)	
others similarly situated,)	
	)	CHIEF JUDGE CHRISTOPHER C.
Plaintiffs,	)	CONNER
)	
vs.)	
	)	<u>JOINT MOTION FOR FINAL</u>
UTZ QUALITY FOODS, INC.	)	<u>APPROVAL OF FLSA</u>
	)	<u>SETTLEMENT</u>
Defendant.)	
	)	And
)	
	)	<u>JOINT MOTION FOR</u>
	)	<u>PRELIMINARY APPROVAL OF</u>
	)	<u>CLASS ACTION SETTLEMENT</u>

Plaintiffs Jason Swiger and Julio Cruz (“FLSA Class Representatives”), on behalf of themselves, the current Opt-In Party Plaintiffs, and the FLSA Eligible Settlement Participants (“FLSA Class”), and Julio Cruz, Julia Williams, Tom Holt, and Nicholas DeRose (“Rule 23 Class Representatives”)¹, on behalf of themselves and the members of the proposed Rule 23 Classes (“Rule 23 Classes”)², and

¹ FLSA Class Representatives and Rule 23 Class Representatives are herein collectively referred to as “Representative Plaintiffs” or “Class Representatives”.

² Class Representatives, Opt-In Party Plaintiffs, FLSA Eligible Settlement Participants, and members of the proposed Rule 23 Classes are herein collectively referred to as “Class Members”.

Defendant Utz Quality Foods, Inc. (“Utz”) hereby respectfully request that this Honorable Court:

1. Approve the Parties’ Settlement Agreement, attached hereto as Exhibit 1, the terms of which were the result of a mediation under the auspices of Michael D. Young, Esq. of JAMS;
2. Grant Plaintiffs leave to file a Third Amended Complaint attached hereto as Exhibit 4, adding Rule 23 Class Actions for alleged wage claims in the Commonwealth of Pennsylvania and the States of New Jersey, Maryland, and North Carolina being brought by separate class representatives for each such state, and permitting the filing of Defendant’s Answer to the Third Amended Complaint, attached hereto as Exhibit 5;
3. Finally approve the Parties’ settlement of the Fair Labor Standards Act (“FLSA”) Class and Notice to the FLSA Class Members, attached hereto as Exhibit D;
4. Designate Jason Swiger and Julio Cruz as FLSA Class Representatives and finally approve their requests for Service Awards;
5. Finally approve the Service Awards to each Discovery Class Representative;

6. Preliminarily approve the Parties' settlement of the Rule 23 Classes and Notice to the Rule 23 Class Members, attached hereto as Exhibit F, pursuant to Fed. R. Civ. P. 23(e);
7. Designate Julio Cruz (for Pennsylvania), Julia Williams (for Maryland), Tom Holt (for North Carolina), and Nicholas DeRose (for New Jersey) as Rule 23 Class Representatives and preliminarily approve their requests for Service Awards; and
8. Designate Anthony J. Lazzaro and Chastity L. Christy of The Lazzaro Law Firm, LLC and Shannon M. Draher and Hans A. Nilges of Nilges Draher, LLC as Class Counsel, and preliminarily approve their request for attorneys' fees and costs.

In support of these motions, Class Representatives and Defendant submit the Settlement Agreement and its exhibits to the Parties' Settlement Agreement (*see* Exhibit 1), which consist of the following documents and proposed orders:

Exhibit A: List of Plaintiffs-Class Members

Exhibit B: Settlement and Release Agreements between Defendant and FLSA Class Representatives, Rule 23 Class Representatives, and Discovery Class Representatives

Exhibit C: Final Order Approving FLSA Settlement and Notice

Exhibit D: FLSA Class Notice of Settlement of Lawsuit, with attached Consent and Release Form entitled

Consent to Opt-Into Lawsuit, Release, and Dismiss
Claims

Exhibit E: Preliminary Order Approving Rule 23 Settlement
and Notice

Exhibit F: Rule 23 Class Notice

The following schedule sets forth a proposed sequence for the Settlement
(which dates are not intended to be deadlines but rather dates by which the parties
will in good faith seek to undertake the following:

- Two (2) business days after Preliminary Approval of the Rule 23 Settlement: Plaintiffs to file their Third Amended Complaint;
- Three (3) business days after Preliminary Approval of the Rule 23 Settlement: Defendant to file its Answer to Third Amended Complaint;
- Five business (5) days after Preliminary Approval of the Rule 23 Settlement: Defendant will provide Class Counsel a spreadsheet containing the names, last known addresses, and Social Security Numbers of the Rule 23 and FLSA Class Members;
- Fourteen calendar (14) days after Preliminary Approval of the Rule 23 Settlement and Notice: Class Counsel will mail Notice to the Rule 23 Class Members (exhibit F);
- Fourteen calendar (14) days after Final Approval of the FLSA Settlement Class and Notice: Class Counsel will mail the Notice and Consent and Release Form to the FLSA Class Members (exhibit D);
- Forty-Five calendar (45) days after mailing of Class Notice: Last day for Rule 23 Class Members to “opt-out” of the Settlement and submit written objections to the Settlement;
- Forty-Five calendar (45) days after mailing of Notice and Consent and Release Forms: Last day for FLSA Class Members to “opt-into” the Settlement;

- Seventy-Five calendar (75) days after mailing of Rule 23 Class Notice: Last day for filing and serving of papers in support of final Settlement approval;
- Seventy-Five calendar (75) days after mailing of Rule 23 Class Notice: Class Counsel will file a Declaration verifying that the Rule 23 Class Notice was distributed, and the Parties will submit the proposed Estimated Schedule of Individual Payments and an updated version of the proposed Final Order and Judgment Entry;
- More than Seventy-Five (75) calendar days after mailing of Rule 23 Class Notice **[DATE TO BE SET BY COURT]**: Final Settlement approval hearing at **[TIME TO BE SET BY COURT]**;
- Thirty (30) calendar days after the Court's Final Order and Judgment Entry: the Effective Date;
- By the Effective Date: Defendant will issue the Settlement Payment and information relating to each Class Member's tax withholdings from their Individual Payments directly to the Settlement Administrator; and
- Five business (5) days after the Effective Date: Settlement Administrator will mail the settlement funds to Class Representatives, Rule 23 Class Members, FLSA Class Members, the Service Awards to Class Representatives and Discovery Class Representatives, and the attorneys' fees and reimbursement of litigation expenses to Class Counsel.

All of the dates specified above shall not be deemed as deadlines, but the Parties shall endeavor in good faith to honor each and all of them. The Parties need not seek an extension of time from the Court for any of the above dates unless it is anticipated by any of the Parties that there any unexpected delay will be material.

As noted in the attached Memorandum in Support, the Settlement Agreement was reached during a mediation including arms-length negotiations between the Parties, with the assistance of Mediator Michael D. Young of JAMS, which were conducted by experienced counsel following investigation and substantial discovery, and on the basis of mutual recognition of the strengths and weaknesses of each other's positions, and the risks to each side of continued litigation.

Respectfully submitted,

/s/ Chastity L. Christy

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2017, a copy of the foregoing *Joint Motion For Final Approval of FLSA Settlement and Joint Motion For Preliminary Approval Of Class Action Settlement* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Chastity L. Christy
Attorney for Plaintiff